



Wiley Rein & Fielding LLP

ORIGINAL

ORIGINAL

RECEIVED

OCT - 8 2002

October 8, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Gregory L. Masters
202.719.7370
gmasters@wrf.com

BY HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

Re: Transfer of Control Applications Filed by Hispanic Broadcasting Corporation ("HBC") and Univision Communications Inc. ("Univision") (MB Docket No. 02-235)

Ex Parte Submission (DA 02-2082)

Dear Ms. Dortch:

We represent Clear Channel Communications, Inc. ("Clear Channel"). Clear Channel has become aware of and has reviewed the written materials placed into the record of this docket on September 30, 2002 by Spanish Broadcasting System, Inc. ("SBS"). According to the accompanying transmittal letter of SBS' counsel, these materials are "associated with an oral ex parte presentation made to the Commission and its staff during the week of September 16, 2002."¹ While Clear Channel is not a party to the applications at issue in this proceeding, it will not sit idly by while SBS and its representatives flaunt fair and customary Commission procedures in an attempt *unilaterally* to impugn Clear Channel's integrity before this agency. Hence, Clear Channel is compelled to place its own views on this record.

It is one thing for Clear Channel to be challenged before the Commission in the form of a petition to deny or other written pleading. In such a case, the Commission's procedural rules require service of the pleading on Clear Channel and provide Clear Channel an opportunity to respond. It is quite another thing, however, for Clear Channel to be attacked before the Commission through tactics which assiduously seek to *avoid* the customary pleading and service rules that ensure an adequate opportunity for defense and a full and fair record in a contested matter. That is the exact nature of SBS' participation in this proceeding. Clear

¹ A separate submission by SBS on September 30, 2002 contains a memorandum "summarizing oral ex parte presentations made to the Commission and its staff on September 18 and 19, 2002."

OTI

Marlene H. Dortch, Esq.

October 8, 2002

Page 2

Channel has searched the record for the existence of any petition to deny or informal objection by SBS against the applications here at issue. None exist. It would appear instead that SBS, taking full advantage of this case's "permit but disclose" status, chose to produce a glossy slide show and several hundred pages of exhibits, take them straight into one or more roomfuls of FCC personnel and present them, complete with accompanying oral advocacy—all without the inconvenience of adverse parties or their representatives who might defend against SBS' allegations.

That is not all, however. Having made its uncontested multimedia presentation to various Commission personnel, SBS then proceeded to announce, in a September 20, 2002 letter of its counsel, that it would seek confidential treatment of the written materials associated with its presentation—in other words, *would seek to withhold from the affected parties the very materials it had used to support its private attacks upon those parties*. Such an approach obviously would sanction the very sort of clandestine behavior that gave rise to the *ex parte* rules. Indeed, either SBS later thought better of this tactic, or (more likely) Commission staff advised SBS of its unacceptability, for SBS ("upon further consideration," according to its counsel's transmittal letter) grudgingly released its written materials on September 30—long after they were required by rule to have been placed into the record.² This hit-and-run method of proceeding turns the concept of full and fair pleading in an adversarial setting on its head.

Clear Channel considers it unnecessary and inappropriate to address the "merits" of SBS' presentation in any detail, except to take issue with the irresponsible and baseless rhetoric that permeates SBS' slide show (e.g., statements that Clear Channel has "intentionally lied to the Commission and conspired to control U.S. Hispanic Radio" and "flagrantly violated Commission ownership limits"). Suffice it to say that the Commission has twice specifically approved Clear Channel's equity interest in HBC—which, as has been noted on this record, would be diluted to a mere 3.66% voting interest in the merged Univision entity by virtue of the transaction at issue here. And Clear Channel has never been found to have lied or


² Sections 1.1206(b)(1) and (b)(2) of the Commission's rules require written *ex parte* presentations (and summaries of oral presentations) to be filed with the Secretary "no later than the next business day after the presentation." SBS's companion notice of the oral *ex parte* presentations states that those presentations were made on September 18 and 19, 2002. Thus, SBS was required to have filed its materials no later than September 20, 2002, and its eventual disclosure came ten days late. This degree of compliance with a "next business day" deadline falls into the "not even close" category.

Marlene H. Dortch, Esq.
October 8, 2002
Page 3

lacked candor before the Commission, despite the filing of numerous petitions to deny which have raised a variety of issues against the company. It is no wonder that SBS has sought to avoid having to defend statements of this nature: they are indefensible and outrageous. Aside from the defamatory invective, SBS' presentation appears to be a slicked-up package of the same allegations SBS has made in a lawsuit against Clear Channel and HBC in Florida court. The case is being litigated in that forum (where both Clear Channel and HBC have moved to dismiss SBS' amended complaint), and the Commission should reject SBS' attempt to litigate it here.

Clear Channel is not unaccustomed to facing written petitions and objections duly served on it or its representatives, and it has defended itself on the record on each such occasion. In that spirit, Clear Channel likewise will not permit its truthfulness and integrity to be attacked before this agency, by a non-petitioner in a proceeding to which Clear Channel is not a party, through *ex parte* presentations that deprive Clear Channel of the opportunity to defend itself. SBS has made outrageous allegations in a procedurally outrageous manner. It is regrettable but necessary that Clear Channel is compelled to complete the record with this statement. Two copies of this letter are being submitted to the Commission's Secretary.

Very truly yours,



Richard J. Bodorff
Gregory L. Masters

cc: Qualex International
David Brown, Esq.